



State of Hawai'i
Department of Public Safety

CRIME VICTIM COMPENSATION COMMISSION

Forty-First Annual Report
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Commissioners

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Executive Summary

In 1967, the Hawai'i State Legislature created the Crime Victim Compensation Commission (the "Commission") to mitigate the financial impact suffered by victims of violent crime. The Commission disburses funds to pay un-reimbursed expenses for crime-related losses experienced by victims who suffer physical or emotional injury, or death, as the result of a violent crime. During Fiscal Year ("FY") 2008, the Commission processed over 900 compensation payments, including 802 new applications for compensation.

The Commission continues to pursue its mission to provide each claimant with compassionate and timely service. The Commission actively collaborates with numerous public and private agencies dedicated to serving crime victims as part of its efforts to improve the overall delivery of victim compensation services. In pursuing its mission, the Commission's projects include the more consistent assessment and collection of the mandatory Crime Victim Compensation Fee (the "Compensation Fee") by the Judiciary, the Medical Expense Reduction Project, and the Restitution Recovery Project.

The **Compensation Fee** is the Commission's primary source of non-tax revenue and the assessment and collection of the Fee is vital to the Commission remaining fiscally self-sufficient. No State general funds have been appropriated for the Commission since FY 2003, and the Commission is now funded solely from non-tax revenue and matching federal funds. Maintaining a consistent and adequate source of non-tax revenue to fund compensation for crime victims and operating expenses remains an important fiscal issue facing the Commission.

The Commission is pleased to report that for the first time since the implementation of the Compensation Fee in 1998, revenues in FY 2008 have exceeded the Commission's expenditures¹. While this is good news, the Commission's optimism is tempered with caution, especially when taking into consideration that a recent First Circuit Court survey found that some judges are still not ordering the Compensation Fee in all eligible cases. In addition, the current economic distress may reduce Compensation Fee collections because assessment of the fee is based on an offender's ability to pay and, at the same time, the Commission's expenditures have increased due to more applications for compensation have been filed, and escalating medical expenses. For these reasons, the Commission will continue to closely monitor whether or not judges order the Compensation Fee in all eligible cases.

The **Medical Expense Reduction Project** seeks to reduce and contain escalating medical expenses by: 1) requesting that medical providers accept payment of seventy percent (70%) of the fees charged (a thirty percent [30%] reduction) as payment in full for the medical services provided in cases involving uninsured crime victims; and 2) negotiating with the several medical providers to each accept a proportionate share of the Commission's maximum award as payment in full for the medical services rendered in cases where a victim's total medical expenses incurred exceed the statutory maximum award of \$20,000.00.

¹Commission revenue includes: Compensation Fees; court-ordered offender restitution as reimbursement for compensation awarded; a 10% statutory assessment on certain inmate wages; interest income; and federal matching VOCA funds.

The **Restitution Recovery Project** (the “Restitution Project”) began in 2003 to collect restitution payments from inmates and parolees, and to disburse those funds to their crime victims. As a result of the Restitution Project, more victims have received increased amounts of restitution payments from offenders. These increased restitution payments advance the victim’s ability to recover, serve to hold the offender accountable to the victim of their crime, and assist the offender in developing a sense of self-respect by righting the wrongs the offender has committed.

While administering the Restitution Project, the Commission identified two areas of particular concern. First, the correctional facilities did not have a standardized procedure for the collection of restitution and were unable to accurately track inmate restitution payments. Second, because the county prosecutors and victim witness advocate programs did not have standardized restitution procedures, restitution was not being requested in all eligible cases, and when restitution was ordered, victim-identifying information was not always preserved. Through the creation of a new computer interface and the implementation of an innovative Training Project, the Commission is working to address these two concerns.

- **POHU** – In order to standardize restitution collection at the correctional facilities, the Commission created the POHU computer interface linking correctional facilities to the restitution management database maintained by the Commission. POHU eliminated nearly all accounting issues, improved communication and the sharing of necessary offender account information, and reduced the time that the Commission spent processing facility checks by eighty percent (80%). The POHU interface has enabled facilities to provide timely and accurate restitution payments, and crime victims now receive proper restitution payments.
- **The Restitution Recovery Training Project** (the “Training Project”) – In order to standardize restitution procedures for the prosecutors and victim witness advocates, the Commission created and implemented the Training Project. The Training Project enlisted the services of highly qualified speakers to address the prosecutors and victim witness advocates on O‘ahu, Maui, Kaua‘i, and the Big Island (in both Hilo and Kona). The Training Project provides the prosecutors and victim witness advocates with ready-made and uniform materials to encourage that restitution be requested in all eligible cases and to ensure that victim information will be preserved. The Commission is now able to provide prosecutors and victim witness advocates with the standardized tools they need to be strong advocates for crime victims to ensure that restitution is ordered in all eligible cases and that victim information is preserved so that victims can be located when restitution is paid.



Mission Statement

“The mission of the Crime Victim Compensation Commission is to equitably and efficiently provide crime victims with the services due to them under Hawai‘i law. In doing so, the Commission treats every victim and survivor with dignity and respect, acknowledging the tremendous impact that violent crime has upon crime victims and our society.”

Overview and History

The Hawai‘i State Legislature created the Commission in 1967 to compensate victims of violent crimes for their out-of-pocket expenses, losses, and pain and suffering resulting from the crime. The Commission was only the third organization of its kind in the country when it was established.

To be eligible for an award, a victim of a violent crime must report the crime to law enforcement without undue delay, apply to the Commission for compensation within eighteen (18) months after the date of the incident, and provide the Commission with documentation of their expenses and losses (i.e., medical bills, insurance statements, pay stubs, etc.) resulting from the crime.

The Commission has processed over 20,000 victim applications since it was established, and presently awards over one million dollars (\$1,000,000.00) per year in compensation to crime victims. These awards have assisted victims with medical costs, counseling costs, lost wages, and funeral expenses not covered by other sources. Many victims would not be able to receive rehabilitation services, counseling services, or bury a loved one without compensation awarded by the Commission.

Through 2001, the Commission relied primarily on State general funds to finance compensation awards and operating costs. In 2003, the Commission became fiscally self-sufficient, relying solely on the following:

- Compensation Fees assessed by judges against criminal offenders
- Court-ordered offender restitution as reimbursement for compensation awarded
- Ten percent (10%) of Hawai‘i inmate wages (for offenders convicted of violent crimes)
- Interest income from funds on deposit
- Federal VOCA funds – the Commission receives a sixty percent (60%) federal match for every State dollar expended to compensate victims of violent crime

Annual Activity

Operations

During FY 2009, the Commission received 889 new applications for compensation and processed over 900 new and ongoing applications. The Commission gives each application full consideration and works diligently with every applicant to ensure accurate and efficient claims processing.

FY 2003 was the first year that the Commission operated without expending any Hawai'i taxpayer dollars. This means that all funds expended by the Commission come from the non-tax revenue sources listed above on Page 3 of this Report. It is, therefore, essential that the Compensation Fee be assessed and collected by the Judiciary in all eligible cases. The Commission necessarily must rely on cooperation and support from the Judiciary to assess and collect the Compensation Fee from convicted offenders in all eligible cases.

“Thank you very much for your administrative decision and order. I accept [the monetary] . . . award for my daughter . . .

Thank you all very much for your help.”

Parent of a child sex-assault victim

It is vitally important to note here that Hawai'i now receives a sixty percent (60%) federal match from the Victims of Crime Act (VOCA). This means that for every dollar of Compensation Fees not assessed by judges against, and collected by the Judiciary from, all eligible convicted offenders results in a compounded total loss of one dollar and sixty cents due to the concomitant loss of the sixty percent federal match.

Compensation in Action - Compensation for Crime-Related Medical Expenses

Case #1 – Motor Vehicle Accident Victim

The 50 year-old male Victim was injured as the result of a motor vehicle collision where the driver hit the Victim's vehicle head-on. The Victim suffered a fractured right upper tibia, a fractured pelvis, pain to his entire back, chest, and abdomen area, a broken middle toe, and various abrasions and contusions. The federal social security department determined that the Victim became disabled on the date of the incident and was unable to continue working as a commercial manager. After exhausting all no-fault motor vehicle insurance benefits, the Victim was still facing substantial medical expenses and lost earnings. The Commission awarded the Victim the \$10,000 maximum award to pay for the remaining medical expenses as well as compensate the Victim for lost earnings incurred as a result of the motor vehicle accident.

Case #2 – Sexual Assault of a Minor

The 4 year-old female Victim was sexually assaulted by her father on several occasions. Although the incident occurred ten years ago and the Commission awarded the Victim compensation at that time, the effects of the sexual assault have been long term. Over the last ten years, the Victim has needed extensive mental health care. Through a supplementary award by the Commission, the Victim was able to receive much needed additional therapy.

Case #3 – Sexual Assault Crime Victim

The 38 year-old female Victim was held against her will, sexually assaulted, and robbed. The Victim suffered physical and emotional trauma. As a result of the crime, the Victim missed twenty-one days of work. The Commission awarded the Victim compensation for her mental health care expenses and lost earnings.

Commission Projects

Medical Expense Reduction Project

The Commission initiated the Expense Reduction Project in FY 2006 to reduce overall medical expenses of uninsured victims of violent crime. Escalating medical costs have further taxed the Commission's already limited resources. This is especially evident in cases where the victim's medical expenses are not covered by medical insurance. In an attempt to mitigate rising medical costs, the Expense Reduction Project has proven to be an unqualified success and absolutely necessary to allow the Commission to continue providing much-needed financial assistance to the victims of violent crimes in Hawai'i.



Compensation for crime-related medical expenses is limited under Section 351-62(b), Hawai'i Revised Statutes, to a maximum of \$20,000.00 in cases involving compensable medical expenses² for catastrophic injuries. This limit is easily exceeded when a violent crime victim is hospitalized for more than several days. Many crime victims who are uninsured fall into the gap group who make too little money to afford medical insurance, and too much money to qualify for Quest medical insurance.

The Commission has taken a two-pronged approach to this issue:

1. Medical Expenses Do Not Exceed the \$20,000.00 Statutory Limit
The Commission requests that medical providers accept 70% payment from the Commission as payment in full for their services for uninsured crime victims. In this way, the Applicant is not responsible for the remaining 30% of the expenses, and the Commission retains more funds to benefit other crime victims.
2. Medical Expenses Exceed the \$20,000.00 Statutory Limit
The Commission leverages the \$20,000.00 maximum award against the full amount of the medical expenses owed by the Applicant by requesting that the medical providers accept the Commission's payment as payment in full. This has enabled the Commission to leverage the \$20,000.00 maximum award available for compensable medical expenses to benefit the Applicant by not having any remaining balance due.

While not all medical providers in the cases selected for the Expense Reduction Project agreed to take a reduced payment as payment in full, in the Expense Reduction Project cases where the Commission was successful in FY 2009, crime victims realized savings of more than \$137,500.00 from medical bills of more than \$334,700.00 in the aggregate, a savings of more than forty one percent (41%).

² **§351-62 Limitations upon award of compensation.** ... (b) No compensation shall be awarded under this chapter in an amount in excess of \$10,000; provided that, if a case involves compensable medical expenses in excess of \$10,000, no compensation shall be awarded in excess of \$20,000 or the actual amount of compensable medical expenses, whichever is lower....

Restitution Recovery Project



“...in the criminal justice system, the victim of crime is almost always neglected. By requiring the convicted person to make restitution and reparation to the victim, justice is served. In so doing, the criminal repays not only “society” but the persons injured in the criminal’s act. There is a dual benefit to this concept: the victim is repaid for his loss and the criminal may develop a degree of self-respect and pride in knowing that he or she righted the wrong committed.”

Sen. Stand. Comm. Rep. No 789, in 1975 Senate Journal @1132, commentary on the Senate’s intent in passing HRS section 706-605(1)(e) which authorizes Courts to order restitution.

Section 706-605(1)(e), Hawai‘i Revised Statutes was enacted in 1975 to provide the Courts with specific statutory authority to order defendants to make restitution payments to reimburse the economic losses suffered by the victims of their crime. Since the passage of this provision, a significant number of victims have not received the court-ordered restitution that they are entitled to. Victims have found it particularly difficult to recover court-ordered restitution from sentenced felons³ and parolees.

The Judiciary previously processed restitution payments for all offenders, including inmates and parolees. For a decade, the Judiciary made efforts to divest itself of the responsibility for processing restitution payments made by inmates and parolees. During this time period, the Judiciary and the Department of Public Safety (“PSD”) had been at an administrative stalemate over who was responsible for processing restitution payments made by inmates and parolees.

The system to process court-ordered restitution payments was not working. In order to open a restitution account for an inmate or parolee, the Judiciary required the name and address of the victim before they would accept any restitution payments. This procedure created a significant barrier to the payment of restitution by inmates and parolees. In many cases it was difficult or impossible for PSD and the Hawai‘i Paroling Authority (the “Paroling Authority”) to secure the name and address of the victim. Victim service providers were understandably uncomfortable about giving the names and addresses of domestic abuse, sexual assault, and other crime victims to PSD and the Paroling Authority. There were concerns that victim safety would be jeopardized if an inmate or parolee inadvertently saw the name and address of their victim in their case file.

Despite numerous meetings between the Judiciary, PSD, the Paroling Authority, and victim service providers, and several false starts, efforts to resolve this issue ultimately failed until the Commission stepped forward. With the support of the PSD Director, the Paroling Authority, and the Honolulu Victim Witness Kokua Program, the Commission initiated a pilot project to accept responsibility for the collection and disbursement of restitution paid by inmates and parolees.

³ Excludes inmates sentenced to incarceration as a condition of probation.

On January 1, 2003, the Commission initiated the pilot Restitution Project to collect and disburse restitution paid by inmates and parolees. The Commission has opened over 2,900 restitution

cases and collected over \$1,100,000.00 in restitution to disburse to crime victims from January 1, 2003 through June 30, 2009. Information identifying the whereabouts of crime victims is kept confidential so that the safety needs of victims are being met. The barriers that made it difficult for PSD and the Paroling Authority to open

“Because of the collaborative efforts between the Crime Victim Compensation Commission and the Hawai‘i Paroling Authority, there are more timely payments of restitution to crime victims than there have been in the past.”

Tommy Johnson, former Administrator, Hawai‘i Paroling Authority

restitution accounts at the Judiciary have also been eliminated. PSD and the Paroling Authority need only send restitution payments to the Commission. The Commission and the County Victim Witness Programs locate the crime victim, and the Commission disburses the restitution payment to the victim.

A functional Restitution Project benefits all involved. It is now easy for Parole Officers to increase the accountability of offenders by having them repay the crime victim they injured. This Project also assists the County Victim Witness Programs in their efforts to restore the crime victims they serve. In some cases where the Commission previously provided compensation awards to crime victims for medical, mental health, or funeral costs, the Commission receives direct reimbursement of those funds, allowing more crime victims to receive assistance.⁴

“Restitution is the cornerstone of restorative justice. Saying we are committed to restorative justice means nothing unless we make a sincere and concerted effort to make sure victims get restitution - without that - restorative justice means nothing. If an offender is not serious about paying restitution, they are not serious about rehabilitating themselves.”

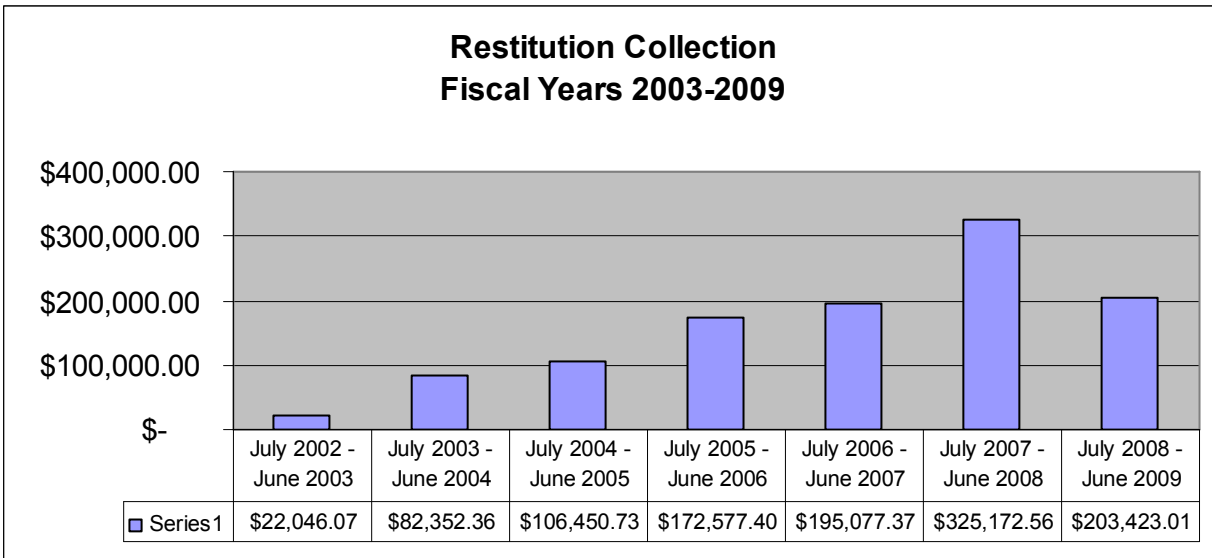
Dennis Dunn, Director, Victim Witness Kokua Program, Department of the Prosecuting Attorney, City and County of Honolulu

Restitution Collection

Restitution collection from inmates and parolees⁵ has increased significantly over the life of the Project. In the first calendar year (2003) of the Restitution Project the Commission collected more than \$46,000.00 and in the past calendar year (2008), the Commission collected more than \$323,000.00. The Commission believes that the significant increase in restitution collections over the life of the Restitution Project reflect the gradual institutionalization of restitution assessment by judges and collection of restitution by the correctional facilities and the Paroling Authority.

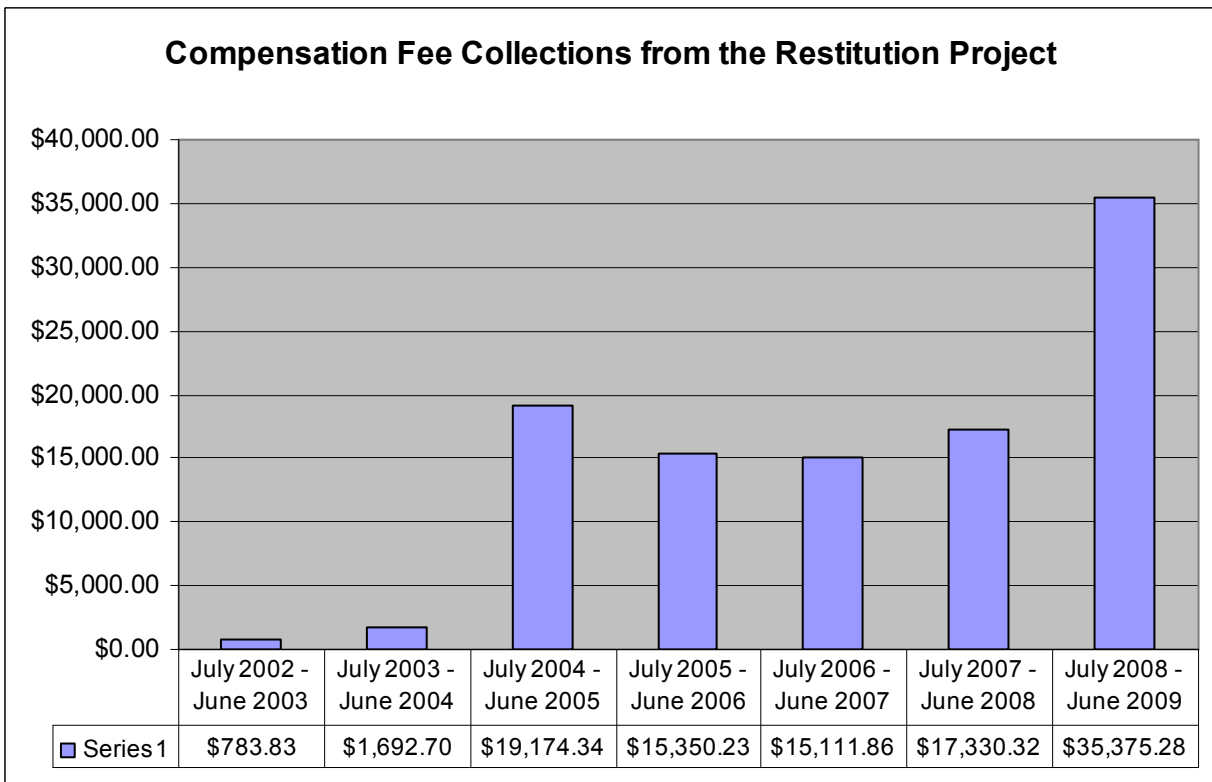
⁴ Section 706-646(2), Hawaii Revised Statutes, provides, in part, that “the court shall order restitution to be paid to the crime victim compensation commission in the event that the victim has been given an award for compensation under chapter 351.”

⁵ Restitution payments are from inmates and parolees and do not include payments from inmates incarcerated as a condition of probation.



Compensation Fee Collection

The Restitution Project has unexpectedly also resulted in an increase in the collection of the Compensation Fee from parolees. In the first year of the Project, the Commission collected more than \$2,000.00, and in the past year the Commission collected more than \$35,000.00 in Compensation Fees. While the Paroling Authority has authority to collect Compensation Fees from a parolee, the correctional facilities do not presently have statutory authority to garnish inmate wages to pay court ordered Compensation Fees.



While administering the Restitution Project, the Commission identified two areas of particular concern. First, the correctional facilities did not have a standardized procedure for the collection of restitution and were unable to accurately track an inmate's restitution payment. Second, because the county prosecutors and victim witness advocate programs did not have standardized restitution procedures, restitution was not being requested in all eligible cases and when restitution was ordered, victim-identifying information was not always preserved. Through the creation of the **POHU** computer interface, and the implementation of the **Restitution Recovery Training Project** (the "Training Project"), the Commission was able to successfully address these two concerns.

POHU

The first area of concern was that the correctional facilities did not have a standardized procedure for restitution collection and were unable to accurately track an inmate's restitution payment. To address these concerns, the Commission, in partnership with PSD, created the new POHU computer interface that links the correctional facilities directly with the restitution management database maintained by the Commission.

The Commission provided training on POHU for the correction facilities' staff during October 2007, and by December 2007, all facilities had implemented POHU. POHU has eliminated nearly all accounting issues, improved communication and the sharing of necessary offender account information, and reduced the Commission's time to process checks from facilities by eighty percent (80%). The POHU interface has promoted facility compliance with restitution payments and has ensured that victims now receive proper restitution payments.

Comments about POHU from restitution coordinators in the correctional facilities:

- *POHU has cut my restitution processing by more than half. I love the system because I can enter restitution payments at my convenience and POHU keeps an accurate running total of the restitution balance, so now I know which inmates are eligible and which are not.*
- *Restitution collections are much higher now compared to previous years because I know that restitution will make its way to crime victims. I now feel a greater responsibility to hold offenders responsible for their restitution obligations.*
- *POHU cuts restitution time by half. Prior to POHU I had to do restitution calculations manually. POHU is efficient and effective. I no longer have to look for every criminal file before making her restitution deductions because I trust the information in POHU. My restitution payments are now on schedule and completed every month.*

Restitution Recovery Training Project

The second area of concern was that the prosecutors and victim witness advocates did not have standardized procedures for requesting restitution and preserving victim information. As a result, restitution was not requested in all eligible cases, and when restitution was ordered,

victim-identifying information was not always preserved so that subsequent restitution payments could be made to the proper victim.

To address these concerns and ensure that crime victims receive the restitution they are entitled to, the Commission conducted training for prosecutors and victim witness advocates on O‘ahu, Maui, Kaua‘i, and the Big Island (in both Hilo and Kona). The Commission also created and distributed materials to assist prosecutors and victim witness advocates in understanding the purpose of restitution, preserving victim information, and requesting restitution in court.

For the prosecutors’ training, the Commission obtained the assistance of Honolulu’s First Deputy Prosecuting Attorney Douglas Chin and other veteran Prosecutors. Mr. Chin and the veteran Prosecutors trained other prosecutors on the restitution process in Hawai‘i and strongly supported the importance and necessity of requesting and advocating for restitution.

In an effort to provide the prosecutors with a one-stop guide to requesting restitution, the Commission created the Restitution Recovery Manual. The Restitution Recovery Manual contains historical information on restitution, all statutory and case law in Hawai‘i relevant to restitution, and several arguments to present should a judge question a request for restitution.

“The restitution training for prosecutors and victim advocates was both inspiring and helpful to seeing victims get back every single penny that they lost as a result of a crime. The manual gave us significant tools for seeking restitution from sentencing courts.”

For the victim witness advocates’ training, the Commission obtained the assistance of renowned victim rights advocate, Anne

Seymour. Ms. Seymour has been instrumental in the development and progress of victim rights throughout the United States. During the training, Ms. Seymour conducted a presentation that conveyed the importance of restitution and the novel methods currently utilized by other states in collecting restitution from offenders.

Douglas Chin, First Deputy Prosecuting Attorney,
Department of the Prosecuting Attorney,
City and County of Honolulu

In collaboration with the Commission and victim witness advocates, Ms. Seymour created forms of letters and an information checklist, as well as two high quality brochures for victim witness advocates to use when assisting crime victims. These materials standardize the tools used by all county officials in Hawai‘i. The Commission also applied and received a grant to fund the training and to print over fifty thousand copies of the new brochure for immediate distribution to victim witness advocates. With this training and these new materials, victim witness advocates have the necessary knowledge and helpful tools to provide victims with accurate information regarding restitution and to preserve victim information.

The Commission is confident that the Training Project has provided the prosecutors and victim witness advocates with the necessary tools to be strong and effective advocates for crime victims in Hawai‘i.

Assessment and Collection of the Mandatory Crime Victim Compensation Fee

The Legislature established the mandatory Crime Victim Compensation Fee in 1998 to provide a funding base for the Commission to begin the process of becoming fiscally self-sufficient. The mandatory Compensation Fee must be assessed by judges against every offender who is convicted of, or who enters a deferred plea (DAG/DANC) to, a petty misdemeanor, misdemeanor, or felony, and is able to pay the fee.⁶

Since the implementation of the Compensation Fee, the Commission encountered significant barriers to collecting the Compensation Fee. For fiscal years 1999, 2001, and 2002 combined, the Judiciary fell nearly one million dollars short of its own estimates for Compensation Fee collections. After 2002, the Judiciary simply ceased providing estimates for Compensation Fee collections. Courtroom surveys revealed that judges were not ordering the Compensation Fee in all eligible cases. For example, judges were (1) waiving the Compensation Fees, but assessing fines with lower priority; (2) not assessing the fee for each eligible offense committed by the same defendant; or (3) unaware of the Compensation Fee altogether.

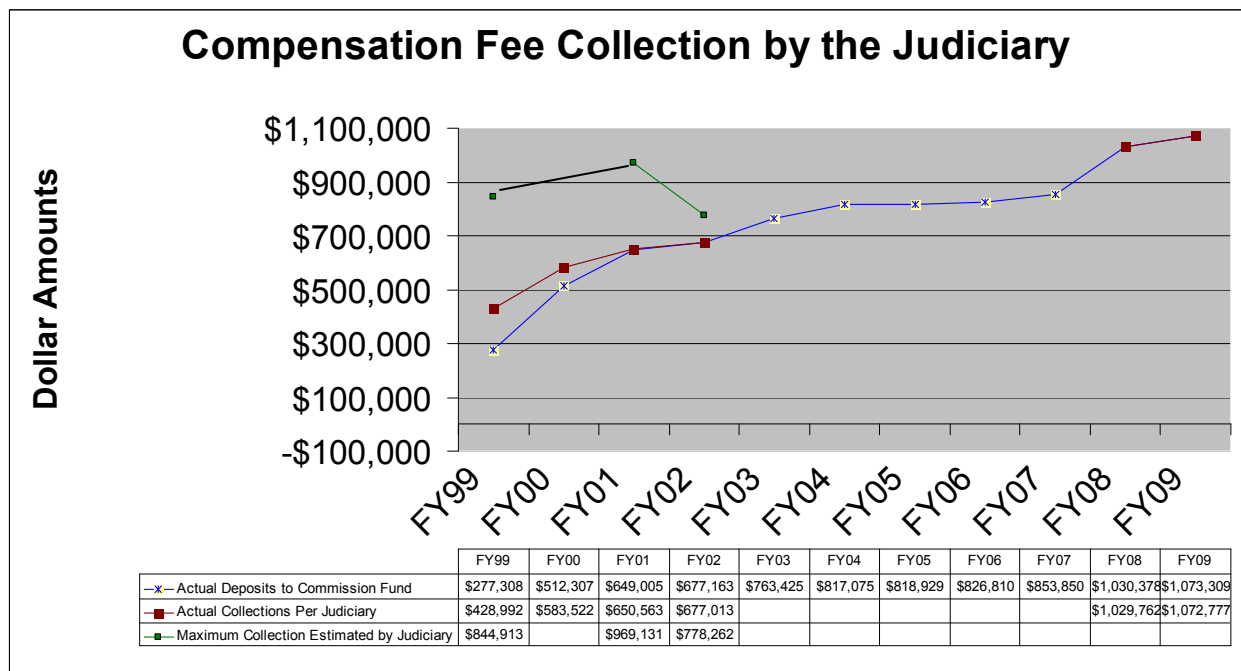
When attempts to collaborate with the Judiciary failed, the Commission requested, and the Legislature passed in 2005, an increase of five dollars (\$5.00) in the Compensation Fee for all crime categories. The Judiciary's collection of the Compensation Fee again fell short of anticipated revenue increases. Concerned that insufficient funds were being collected, the Legislature passed a resolution in 2007 requiring the Judiciary to report its progress in ordering and collecting the mandatory Compensation Fee. According to the Judiciary's response, the Compensation Fee was ordered in seventy-nine percent (79%), and waived in twenty-one percent (21%), of eligible cases. The Judiciary, however, could not provide the number of cases in which the Compensation Fee was actually collected, except to say that during the first quarter of fiscal year 2008, \$183,051.00 was collected.

As a result of the Legislature holding the Judiciary accountable for its collection of the Compensation Fee, the Commission is pleased to report that there was a meaningful increase in Compensation Fee revenue in FY 2008 and FY 2009. While this is good news, the Commission's optimism is tempered with caution, especially when taking into consideration that a recent First Circuit Court survey found that some judges are still not ordering the Compensation Fee in all eligible cases. In addition, the current economic distress may reduce Compensation Fee collections because assessment of the fee is based on an offender's ability to pay and, at the same time, the Commission's expenditures have increased due to more applications for compensation have been filed, and escalating medical expenses.

⁶ Section 351-62.6, Hawai'i Revised Statutes, provides that the court shall assess a Compensation Fee against every convicted offender, or offender who enters a deferred plea, and who is or will be able to pay the Fee. Fees are assessed as follows:

1. a \$30 fee for a petty misdemeanor;
2. a \$55 fee for a misdemeanor; and
3. a \$105 to \$505 fee for a felony.

The Commission is acutely aware that its ability to remain self-sufficient depends on judges ordering the Compensation Fee, and the Judiciary successfully collecting the Compensation Fee from offenders in all eligible cases. For this reason, the Commission remains committed to its efforts to ensure that the mandatory Compensation Fee is assessed by judges and collected by the Judiciary in all eligible cases where the offender has the ability to pay. For these reasons, the Commission will continue to closely monitor whether or not judges order the Compensation Fee, and whether or not the Judiciary collects it, in all eligible cases.



Note: Blank fields in the table indicate that the data for that year was not available.



Conclusion

For each of the past forty years, the Commission has provided enhanced levels of service to the victims of violent crime in Hawai‘i. The Commission has streamlined case processing by increasing management efficiency, reducing the pending case backlog, cultivating strategic partnerships with other public and private agencies, and making significant progress towards fiscal self-sufficiency. Even with all of these improvements, the Commission will maintain its pursuit of strategies to further improve services to crime victims.

The Commission will continue to diligently pursue its mission to mitigate the costly and emotionally devastating impact of violent crime on citizens and visitors through continued collaborative efforts, further improvements in management efficiency, and strong staff commitment.

